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**Orange Blossom Manor, Inc. and UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC. Case 12-CA-19209**

March 26, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
BRAME

Pursuant to a charge filed on December 15, 1997, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on January 15, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-7995. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and alleging affirmative defenses.

On February 26, 1998, the General Counsel filed a Motion for Summary Judgment. On February 27, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer<sup>1</sup> the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's inclusion of a challenged ballot in the representation proceeding and the Union's status as the employees' collective-bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

<sup>1</sup> Although the Respondent denies paras. 2(b) and (c) of the complaint which describe the jurisdictional nature of its business, the Respondent stipulated to that description in the underlying representation proceeding. Accordingly, and as the Respondent admits the remaining jurisdictional allegations in the complaint, in agreement with the General Counsel, we find that the Respondent's denial does not raise any jurisdictional issue warranting a hearing in this proceeding.

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, with an office and place of business located in Pembroke Park, Florida, has been engaged in the business of operating an assisted living facility providing care for the elderly.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000 and during the same period of time, the Respondent, in conducting its business operations, purchased and received at its Pembroke Park, Florida facility goods and materials valued in excess of \$10,000 directly from points located outside the State of Florida. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held September 25, 1996, the Union was certified on November 25, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time CNAs, activity employees, housekeeping employees, laundry maintenance, and dietary employees, waiters and waitresses, driver, and receptionist employees employed by the Respondent at its facility located at 3535 SW 52nd Avenue, Pembroke Park, Florida; excluding all other employees including LPNs, technicians, professional employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

On or about December 1, 1997, the Union, by letter, requested the Respondent to meet and bargain, and, since on or about December 1, 1997, the Respondent

has failed and refused. We find that this refusal constitutes an unlawful refusal to meet and bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing on and after December 1, 1997, to meet and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to meet and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Orange Blossom Manor, Inc., Pembroke, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time CNAs, activity employees, housekeeping employees, laundry

maintenance, and dietary employees, waiters and waitresses, driver, and receptionist employees employed by the Respondent at its facility located at 3535 SW 52nd Avenue, Pembroke Park, Florida; excluding all other employees including LPNs, technicians, professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Pembroke Park, Florida, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 17, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 26, 1998

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with UNITE! Union of Needletrades, Industrial and Textile Employees, AFL-CIO-CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time CNAs, activity employees, housekeeping employees, laundry maintenance, and dietary employees, waiters and waitresses, driver, and receptionist employees employed by us at our facility located at 3535 SW 52nd Avenue, Pembroke Park, Florida; excluding all other employees including LPNs, technicians, professional employees, office clerical employees, guards and supervisors as defined in the Act.

ORANGE BLOSSOM MANOR, INC.